

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

OSCAR A. HERNANDEZ; and
MARTHA VALLE NAVARRO,

Plaintiffs,

v.

US BANK NA; and
OCWEN LOAN SERVICING, LLC,

Defendants.

C.A. No. 1:18-cv-00121-WES-LDA

**JOINT MOTION TO RESCIND FORECLOSURE AND FOR APPROVAL
OF STIPULATION AND JUDGMENT RESCINDING FORECLOSURE
AND DISSOLVING *LIS PENDENS***

Plaintiffs, Oscar A. Hernandez and Martha Valle Navarro (“Plaintiffs”), and Defendants, U.S. Bank N.A., in its capacity as Trustee for the registered holders of MASTR Asset Backed Securities Trust 2005-NC1, Mortgage Pass-Through Certificates, Series 2005-NC1, improperly named as US Bank NA (“U.S. Bank, as Trustee”), and Ocwen Loan Servicing LLC (“Ocwen”) (collectively, “Defendants”), hereby request entry of an order rescinding the foreclosure sale of the property located at 176-178 Grove Street, Woonsocket, Rhode Island (the “Property”), and reinstating the mortgage on the Property granted by Plaintiffs, so that the parties can effectuate a modification of Plaintiffs’ mortgage loan. The parties also request dissolution of the *Lis Pendens* recorded in the Property’s chain of title. The parties have executed a Stipulation and Judgment Rescinding Foreclosure and Dissolving *Lis Pendens*, filed herewith, and respectfully request that this Court enter that Stipulation as a Judgment of the Court.

As grounds for this Joint Motion, Plaintiffs and Defendants state as follows:

I. BRIEF FACTUAL AND PROCEDURAL HISTORY

A. The Mortgage and Subsequent Foreclosure

On September 30, 2004, Plaintiffs granted a mortgage on their Property in favor of New Century Mortgage Corporation (“New Century”) in the original principal amount of \$270,000.00 to secure their obligations under a promissory note to New Century (the “Mortgage”). (Mortgage, **Exhibit A**.) The Mortgage was recorded in the City of Woonsocket Land Evidence Records on October 1, 2004 at Book 1387, Page 511. (*Id.*) On or about June 3, 2008, New Century, by and through its Attorney-in-Fact, Ocwen, assigned the Mortgage to U.S. Bank, as Trustee, pursuant to an Assignment of Mortgage (the “Assignment”) (Assignment, **Exhibit B**.) The Assignment was recorded in the City of Woonsocket Land Evidence Records on June 17, 2008 at Book 1748, page 92. (*Id.*)

On or about December 6, 2017, U.S. Bank, as Trustee, purchased the Property at the duly-scheduled and conducted foreclosure sale and executed a Statutory Form of Foreclosure Deed Under Power of Sale in Mortgage (the “Foreclosure Deed”) on December 19, 2017. (Foreclosure Deed, **Exhibit C**.) The Foreclosure Deed memorializing the sale was recorded in the City of Woonsocket Land Evidence Records on January 9, 2018 at Book 2334, Page 12. (*Id.*)

B. The Pending Litigation and the Loan Modification

On December 13, 2017, Plaintiffs commenced the instant contested foreclosure action in the Providence County Superior Court against Defendants, under Case Number PM-2017-6009, seeking declaratory and monetary relief. Following the commencement of this action, Plaintiffs recorded a Notice of *Lis Pendens* in the Property’s chain of title on December 14, 2017 at Book 2329, Page 38. (*Lis Pendens*, **Exhibit D**.) On March 15, 2018, Defendants, by and through prior counsel, removed this matter to the U.S. District Court for the District of Rhode Island. Prior to

answering or otherwise responding to the Plaintiffs' Complaint, Plaintiffs and Defendants have reached a settlement agreement that will modify the Mortgage. However, the parties cannot complete the modification until record title to the Property reflects that the foreclosure sale has been set aside and the Foreclosure Deed rescinded. The parties have agreed the modification will fully resolve the Plaintiffs' pending claims against Defendants.

II. JOINT REQUESTS FOR RELIEF

Plaintiffs and U.S. Bank, as Trustee, and Ocwen jointly seek an order from this Court setting aside the December 6, 2017 foreclosure sale of the Property and rescinding the Foreclosure Deed executed on December 19, 2017 and recorded in the Property's chain of title on January 9, 2018 at Book 2334, Page 12. A rescission of the foreclosure is well within the Court's equitable powers and the discretion of this Court. *See, e.g., Wells Fargo Bank, N.A. v. Jaaskelainen*, 407 B.R. 449, 460-62 (D. Mass. 2009) (explaining rescission is an equitable doctrine and remedy within the discretion of trial courts and dependent on circumstances of each case); *Turner v. Domestic Inv. & Loan Corp.*, 375 A.2d 956, 959 (R.I. 1977). Furthermore, Plaintiffs and U.S. Bank, as Trustee, and Ocwen jointly request that the *Lis Pendens* recorded by Plaintiffs on December 14, 2017 in the Property's chain of title at Book 2329, Page 38 be dissolved following the termination of the pending action.

Accordingly, Plaintiffs and U.S. Bank, as Trustee, and Ocwen respectfully request this Court endorse the Stipulation and Judgment Rescinding Foreclosure and Dissolving *Lis Pendens* filed herewith in order to effectuate and complete the proposed loan modification agreement. Upon the granting of this Joint Motion, the parties represent that the proposed loan modification will fully resolve Plaintiffs' pending claims. Moreover, a recording of the proposed Stipulation and Judgment will operate to clear title to the Property.

WHEREFORE, Plaintiffs, Oscar A. Hernandez and Martha Valle Navarro, and Defendants, U.S. Bank N.A., in its capacity as Trustee for the registered holders of MASTR Asset Backed Securities Trust 2005-NC1, Mortgage Pass-Through Certificates, Series 2005-NC1, improperly named as US Bank NA, and Ocwen Loan Servicing LLC, respectfully request the Court grant this Joint Motion to Rescind Foreclosure by endorsement of the Stipulation and Judgment Rescinding Foreclosure and Dissolving *Lis Pendens* filed herewith, together with any further relief the Court deems just and proper.

Respectfully submitted,

OSCAR A. HERNANDEZ; and
MARTHA VALLE NAVARRO,

By Their Attorneys,

/s/ Stephen P. Levesque
Stephen P. Levesque, Bar No. 5742
165 Burnside Street, 2nd Floor
Cranston, RI 02910
Telephone: (401) 490-4900
Stephen@spllaw.com

U.S. BANK N.A., IN ITS CAPACITY AS
TRUSTEE FOR THE REGISTERED
HOLDERS OF MASTR ASSET BACKED
SECURITIES TRUST 2005-NC1,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-NC1; and
OCWEN LOAN SERVICING, LLC,

By Their Attorneys,

/s/ Ethan Z. Tieger
Samuel C. Bodurtha, Bar No. 7075
Ethan Z. Tieger, Bar No. 9308
HINSHAW & CULBERTSON LLP
321 South Main Street, Suite 301
Providence, RI 02903
Telephone: (401) 751-0842
Facsimile: (401) 751-0072
sbodurtha@hinshawlaw.com
etieger@hinshawlaw.com

Dated: June 6, 2018

CERTIFICATE OF SERVICE

I, Ethan Z. Tieger, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants on June 6, 2018.

/s/ Ethan Z. Tieger

Ethan Z. Tieger